

Before the
Administrative Hearing Commission
State of Missouri



STATE BOARD OF REGISTRATION FOR
THE HEALING ARTS,

Petitioner,

vs.

JERRY S. REIFEISS, M.D.,

Respondent.

No. 05-1315 HA

CONSENT ORDER

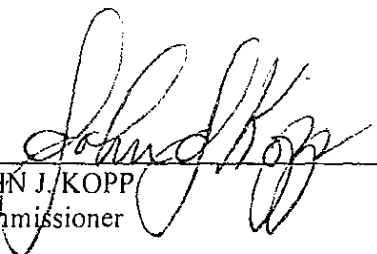
The licensing authority filed a complaint. Section 621.045, RSMo 2000, gives us jurisdiction.

On May 10, 2006, the parties filed a "Joint Stipulation of Facts, Waiver of Hearing Before the Administrative Hearing Commission and State Board of Registration for the Healing Arts, Conclusions of Law and Disciplinary Order." Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. *Buckner v. Buckner*, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under § 334.100.2(1), (2), (4), (4g), (4i), (4j), (13) and (22), RSMo 2000. We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order. We certify the record to the licensing agency under § 621.110, RSMo 2000.

The only issue before this Commission is whether the stipulated conduct constitutes cause to discipline the license. The appropriate disciplinary action is not within our power to decide; that is subject to the licensing authority's decision or the parties' agreement. Section 621.110, RSMo 2000.

No statute authorizes us to determine whether the agency has complied with the provisions of section 621.045.3, RSMo 2000. We have no power to superintend agency compliance with statutory procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W. 2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied with such procedures.

SO ORDERED on May 17, 2006.


JOHN J. KOPP
Commissioner

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED
MAY 10 2006
ADMINISTRATIVE HEARING
COMMISSION

STATE BOARD OF REGISTRATION)
FOR THE HEALING ARTS,)

Board,)

v.)

JERRY S. REIFEISS, M.D.)

Licensee.)

05-1315HA

No. ~~06-1315HA~~

JOINT STIPULATION OF FACTS, WAIVER OF HEARING BEFORE
THE ADMINISTRATIVE HEARING COMMISSION AND STATE BOARD OF
REGISTRATION FOR THE HEALING ARTS.
CONCLUSIONS OF LAW AND DISCIPLINARY ORDER

Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission (1 CSR 15-2.450(1)) and pursuant to the terms of § 536.060, RSMo 2000, as it is made applicable to the Administrative Hearing Commission by § 621.135, RSMo 2000, the parties waive the right to a hearing of the above-styled case by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the State Board of Registration for the Healing Arts under § 621.110, RSMo 2000, and jointly stipulate for purposes of settlement only to the facts, proposed conclusions of law, and consent to the imposition of disciplinary action against the medical license of Respondent for violations of statutes set forth below.

Respondent acknowledges that he has received and reviewed a copy of the Complaint filed by the State Board of Registration for the Healing and the parties submit to the jurisdiction of the Administrative Hearing Commission.

Respondent acknowledges that he is aware of the various rights and privileges afforded him by law, including the right to appear and be represented by counsel; the right to have a copy of the Complaint served upon him by the Administrative Hearing Commission prior to the entering of its order; the right to have all charges against Respondent proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against Respondent; the right to present evidence on Respondent's own behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the complaint pending against Respondent; and the right to a ruling on questions of law by an administrative hearing commissioner. Being aware of these rights provided Respondent by operation of law, Respondent, Jerry Reifeiss, M.D., knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation of Facts, Waiver of Hearing Before the Administrative Hearing Commission and the State Board of Registration for the Healing Arts, Conclusions of Law, and Disciplinary Order and agrees to abide by the terms of this document as they pertain to Respondent.

Based upon the foregoing, Petitioner and Respondent jointly stipulate to the following, and request that the Administrative Hearing Commission adopt as its own the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the Administrative Hearing Commission's Findings of Fact and Conclusions of Law:

JOINT PROPOSED FINDINGS OF FACT

1. The State Board of Registration for the Healing Arts ("Board") is an agency of the State of Missouri created and established pursuant to § 334.120, for the purpose of executing and enforcing the provisions of Chapter 334, RSMo.

2. The Respondent ("Licensee") was licensed by the Board as a licensed medical doctor with a specialty in Family Practice, License No. R7G55. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

Count I - Patient Abandonment

3. The Board realleges paragraphs 1 through 2.

4. On or about March 19, 2004, Licensee was employed at Ray County Memorial Hospital (hereinafter "RCMH") 904 Wollard Boulevard, Richmond, Missouri.

5. On or about March 19, 2004, Licensee had a waiting room full of patients at his clinic. Neither the clinic nor his office could locate him that day. Licensee did not notify the RCMH staff or his patients that he would not see patients that day.

6. On or about March 19, 2004, patient C. C., a patient of Licensee, was in the hospital for cellulitis of the right knee and was very upset that she had not been seen by Licensee.

7. Licensee never saw patient C. C. on March 19, 2004, and patient left AMA at 6:00 p.m. that evening.

Count II - Unprofessional Conduct

8. The Board realleges paragraphs 1 through 7.

9. On or about June 18, 2004, Licensee was employed at the Richmond Medical Clinic (hereinafter "Reifeiss Clinic") previously located at 16603 Conservation Road Richmond, Missouri.

10. On or about June 18, 2004, Licensee staggered towards patient M. T., a thirteen year old girl, in the hallway. Licensee then stopped and started talking with patient M. T., grabbed her and said "give me a kiss." Patient M.T. then shoved Licensee away. Patient M.T. smelled alcohol on Licensee's breath.

11. As a result of the conduct referenced above in paragraph 10, on or about May 12, 2005, Licensee plead guilty in the Circuit Court of Carroll County, Missouri in the case styled State v. Jerry Reifeiss to assault in the third degree, Case No. 04CR103585.

12. Under § 334.031.1, RSMo 2000, the qualifications for licensure as a physician include good moral character.

13. Assault in the third degree of a patient is an offense reasonably related to the qualifications, functions and duties of a physician, in that commission of said offense demonstrates a lack of good moral character.

14. Assault in the third degree of a patient is an offense reasonably related to the qualifications, functions and duties of a physician, in that commission of said offense occurred in Licensee's office with a patient.

15. Assault in the third degree is an offense involving moral turpitude.

16. The act of grabbing a minor patient and demanding a kiss, while Licensee was on duty, without her consent constitutes misconduct, unethical conduct, and unprofessional conduct in the performance of Licensee's functions or duties as a physician.

Count III - Alcohol Impairment

17. The Board realleges paragraphs 1 through 16.

18. On or about January 8, 2004, Licensee came to RCMH to make rounds on his patients. Licensee was having apparent difficulty walking, maintaining his thought processes in conversations. Licensee also needed assistance from charge nurse to find correct patients' rooms.

19. On or about January 9, 2004, the nursing staff of RCMH reported to the Director of Nursing D.L., the instance referenced above in paragraph 31. Licensee also had alcohol on his breath that day.

20. On or about July 26, 2004, to July 31, 2004, Licensee voluntarily admitted himself into treatment at Two Rivers Psychiatric Hospital in Kansas City, Missouri, for alcohol intoxication, dependence and withdrawal. During treatment Licensee stated he had a history of drinking upward of 2 pints of alcohol a day, drinking in the morning, having morning shakes, and blackouts.

21. On or about August 17, 2004, to August 27, 2004, Licensee was admitted to Valley Hope Association with an initial and final diagnosis of alcohol dependence and substance induced mood disorder.

22. On or about October 1, 2004, Licensee admitted, in a handwritten letter to the Board, that he "suffer[s] from alcoholism/addiction."

23. The use of alcoholic beverages as referenced in the above paragraphs 30 through 32, and 34 impaired Licensee's ability to perform the work of a licensed physician.

24. Licensee's use of alcohol and continuing state of intoxication during the treatment of his patients constitutes misconduct, unethical conduct, and unprofessional conduct in the performance of Licensee's functions or duties as a physician.

Count IV - Sexual relationship with patient A.D.

25. The Board realleges paragraphs 1 through 24.

26. During the year 2001, Licensee developed a sexual relationship with his patient A.D.

27. Patient A.D. and Licensee's sexual relationship lasted for the duration of approximately four months.

28. Licensee treated patient A.D. during the sexual relationship.

29. The act of Licensee exercising influence within a physician-patient relationship for purposes of engaging a patient in sexual activity constitutes misconduct, unethical conduct, and unprofessional conduct in the performance of Licensee's functions or duties as a physician.

Count VI - Sexual Relationship with patient S.L.

30. The Board realleges paragraphs 1 through 29.

31. During the year 2003, S.L. was employed at the Reifeiss Clinic as a certified nurses assistant, and was also being treated as a patient by Licensee at that time.

32. On or about March 1, 2003, Licensee called S.L. at the Reifeiss Clinic and told her to come to his house because he was going to commit suicide. That evening Licensee engaged in sexual relations with S.L.

33. During the time of the conduct described above in paragraph 32, a physician-patient relationship existed between Licensee and S.L.

34. The act of Licensee exercising influence within a physician-patient relationship for purposes of engaging a patient in sexual activity constitutes misconduct, unethical conduct, and unprofessional conduct in the performance of Licensee's functions or duties as a physician.

Count V - Controlled Substance Abuse

35. The Board realleges paragraphs 1 through 34.
36. On or about July 26, 2004, to July 31, 2004, Licensee voluntarily admitted himself into treatment at Two Rivers Psychiatric Hospital in Kansas City, Missouri. During treatment Licensee stated he had a history of occasionally using Xanax or Seconal with Donnatal, and opioids including Lorcet.
37. Upon admission to Two Rivers Licensee's urine drug screen was positive for barbiturates, benzodiazepines, and opioids.
38. Licensee did not have a valid prescription for Xanax, Seconal, or Lorcet.
39. Pursuant to § 195.017, RSMo 2000, Xanax, Seconal, and Lorcet are controlled substances.
40. Licensee's above-mentioned conduct constitutes a violation of § 195.202.1, RSMo 2000, which states: "Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance."
41. On or about October 1, 2004, Licensee admitted, in a handwritten letter to the Board, that he suffered from a drug addiction and "hope[d] and pray[ed] never again to fall victim to them."

Count VI - Intern R.W.

42. The Board realleges paragraphs 1 through 41.
43. During the summer of 2002, R.W. served an internship at the Reifeiss

Clinic working with the Licensee.

44. During the summer of 2002, intern R.W. observed CNA C.H. passing Xanax to Licensee from C.H.'s supply in her purse for Licensee's personal use.

45. Licensee did not have a valid prescription for Xanax at the time of the conduct described herein.

46. Pursuant to § 195.017, RSMo 2000, Xanax is a controlled substance.

47. Licensee's above-mentioned conduct constitutes a violation of § 195.202.1, RSMo 2000, which states: "Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance."

48. During the summer of 2002, intern R.W. observed patients with appointments at the clinic being sent home or re-scheduled on days when no nurse practitioner was at the clinic and Licensee did not come in when scheduled. During the summer of 2002, Licensee was not coming into the clinic on a continuing basis.

Count VII - Suspension of Privileges

49. The Board realleges paragraphs 1 through 48.

50. Prior to April, 2004, Licensee was a member of the medical staff at RCMH in Richmond, Missouri.

51. In or around April, 2004, Licensee requested a sixty-day leave of absence from RCMH. The medical staff at RCMH granted Licensee's request on the condition that Licensee complete a substance abuse program prior to his return.

52. In or around April, 2004, the medical staff at RCMH learned that Licensee had been arrested for Felony Assault.

53. The medical staff at RCMH also learned that Licensee had been arrested for Sexual Misconduct with a Minor Child. The arrest for Sexual Misconduct with a Minor child pertains to the incident involving the thirteen year old patient M.T. reference in Count II.

54. Based upon this information, the medical staff at RCMH suspended Licensee's staff privileges pending further investigation of improper professional behavior.

55. On or about April 8, 2004, before any further investigation had been conducted, Licensee resigned from the staff at Ray County. Licensee's resignation was accepted by the medical staff at RCMH.

JOINT PROPOSED CONCLUSIONS OF LAW

2. Based on the foregoing, Licensee's license is subject to disciplinary action pursuant to § 334.100.2(1), (2), (4), (4)(g), (4)(i), (4)(j), (13) and (22), RSMo, which provides:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

....

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

....

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated pursuant to sections 335.011 to 335.096, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed.

....

(4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by this chapter . . .

....

(g) Final disciplinary action by any professional medical or osteopathic association or society or licensed hospital or medical staff of such hospital in this or any other state or territory, whether agreed to voluntarily or not, and

including, but not limited to, any removal, suspension, limitation, or restriction of the person's license or staff or hospital privileges, failure to renew such privileges or license for cause, or other final disciplinary action, if the action was in any way related to unprofessional conduct, professional incompetence, malpractice or any other violation of any provision of this chapter;

.....
(i) Exercising influence within a physician-patient relationship for purposes of engaging a patient in sexual activity;

.....
(j) Terminating the medical care of a patient without adequate notice or without making other arrangements for the continued care of the patient;

.....
(13) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

.....
(22) A pattern of personal use or consumption of any controlled substance unless it is prescribed, dispensed or administered by another physician who is authorized by law to do so;

2. Licensee's conduct, as established by the foregoing facts, falls within the intendments of § 334.100.2(1), (2), (4), (4)(g), (4)(i), (4)(j), (13) and (22), RSMo.

3. Cause exists for the Board to take disciplinary action against Licensees' license under § 334.100.2 334.100.2(1), (2), (4), (4)(g), (4)(i), (4)(j), (13) and (22), RSMo.

II

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.110, RSMo 2000. This disciplinary order will be effective immediately upon the issuance of the Consent Order of the Administrative Hearing Commission without further action by either party:

JOINT DISCIPLINARY ORDER

1. The medical license, No. R7G55, issued to Licensee is hereby VOLUNTARILY SURRENDERED in lieu of formal disciplinary action. Licensee understands that this Agreement will be reported to the National Practitioner's Data Bank, the Health Integrity and Protection Data Bank, and the Federation of State Medical Boards as an action in lieu of discipline.

2. Within 10 days of the effective date of this Agreement, Licensee shall return all indicia of Missouri medical licensure to the Board, including but not limited to, his wall-hanging license and pocket card.

3. The parties to this Joint Stipulation understand that the State Board of Registration for the Healing Arts will maintain this Joint Stipulation as an open and public record of the Board as provided in Chapters 334, 610, and 620, RSMo.

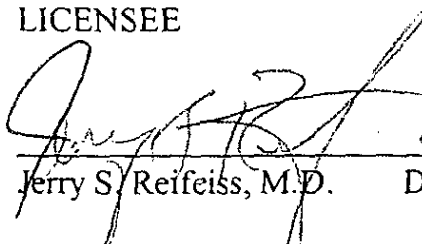
4. In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and State Board of Registration for the Healing Arts, Conclusion of Law and Disciplinary Order and to the termination of any further proceedings before the Administrative Hearing Commission based upon the Complaint filed by the Petitioner in the above-styled action.

5. The terms of this Joint Stipulation are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

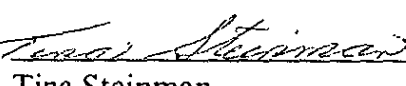
6. Respondent hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of

the matters raised in this litigation, or from the negotiation or execution of this settlement and release agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement and release agreement in that it survives in perpetuity even in the event that any court of law deems this settlement and release agreement or any portion thereof void or unenforceable.

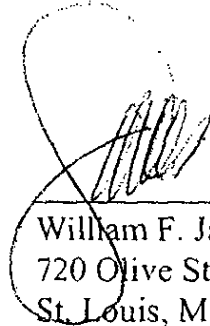
LICENSEE


Jerry S. Reifeiss, M.D. Date 4/14/06

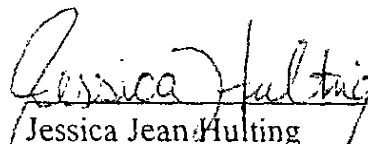
BOARD


Tina Steinman Date 5/5/06
Executive Director

WUESTLING & JAMES, L.L.C.


William F. James
720 Olive Street, Suite 2020
St. Louis, MO 63101

JEREMIAH W. (JAY) NIXON
Attorney General


Jessica Jean Hulting
Assistant Attorney General
Missouri Bar No. 57462

ATTORNEY FOR RESPONDENT

Broadway State Office Building
P.O. Box 899
Jefferson City, MO 65102
(573) 751-1143
(573) 751-5660 Facsimile

ATTORNEYS FOR BOARD

EFFECTIVE THIS 5 DAY OF May, 2006.